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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-166

LURA VIRGINIA BICKEL LEE CARTER, *Petitioner,*

v.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, a corporation, and UNITED STATES OF AMERICA, *Respondents.*

BRIEF FOR RESPONDENT, THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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The Respondent The Connecticut Mutual Life Insurance Company respectfully requests the Court to deny the Petition for a Writ of Certiorari of Petitioner Lura Virginia Bickel Lee Carter (Petitioner).

STATUTE INVOLVED

The statute involved is 28 U.S.C. 2001(a) which provides:

> "Any realty or interest therein sold under any order or decree of any court of the United States

shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. *Such sale shall be upon such terms and conditions as the court directs.*" (Emphasis added.)

QUESTION PRESENTED

Whether the Court of Appeals' Affirmance of the District Court's Confirmation of the Foreclosure Sale, and Its Method of Determining Florida Law, Should Be Reviewed by This Court.

ARGUMENT

I.

The District Court, in Confirming the Foreclosure Sale, Acted in Its Sound Discretion as Authorized by Federal Statute.

The terms and conditions of the foreclosure sale in the District Court are procedural matters controlled by federal rather than state law. While it is true that the action was originally brought under the Florida statute relating to foreclosures, the removal of the action by the Respondent United States of America to the federal court brought into play the federal procedure. Congress has provided such procedure in 28 U.S.C. 2001(a) (quoted in full above), which provides in part that *"such sale shall be upon such terms and conditions as the Court directs."* A broad discretion is thereby vested in the District Court:

> "It is a well settled rule that, except in case of abuse, appellate courts will not disturb the exercise of a district court's discretion in setting the terms and conditions for a judicial sale *and the confirmation thereof.*" (United States v.

Branch Coal Corp., 390 F. 2d 7 (3d Cir. 1968) (Emphasis added.))

The Court of Appeals found no abuse of discretion in the District Court's confirmation of the sale. As the Court of Appeals pointed out, no hearing was requested, and the objections raised to the sale could properly be determined by the District Court without further presentation. (Petitioner's Petition (hereafter referred to as Petition), p. A6)

Thus, the District Court overruled the objections, as it was authorized to do by 28 U.S.C. 2001(a). Furthermore, the Court of Appeals specifically considered such objections and determined that the lower court had reasonable basis for overruling the objections (Petition, pp. A6-A7). The objections therefore were afforded the consideration by the District Court that they deserve, and the lower court's action was properly reviewed by the Court of Appeals. No case is made for a further review by this Court, nor has an important question of federal law been raised.

II.

If Florida Law Is Applicable on a Procedural Question Regarding the Confirmation, the Court of Appeals' Method of Determining Such Law Was Reasonable.

The Court of Appeals by implication took the view in its opinion on rehearing that Florida law is controlling on the question of whether Petitioner was entitled to a hearing on the objections raised to confirmation of the sale (Petition, p. A6). Respondent respectfully suggests, as stated above, that this question is a procedural matter controlled by federal law, specifically in this case by 28 U.S.C. 2001(a) quoted above.

Even so, whether applicable or not, the requirements of Florida law were met. As stated in the Petition (p. 7), Section 702.02(5) of Florida Statutes requires the court to "consider" objections to confirmation. The District Court considered the objections, the Court of Appeals found that the District Court considered the objections, and in addition the Court of Appeals found a reasonable basis for the lower court's decision (Petition, pp. A6-A7). As the Court of Appeals viewed the matter, it saw no mandatory requirement for a further hearing or presentation in the word "consider" as that term is usually understood.

On the other hand, Petitioner strains the word's meaning in an attempt to create an ambiguity, and then bootstraps the ambiguity into a demand that the matter be certified to the Florida courts for further review. The certification procedure indeed is useful, as stated by this Court in *Clay* v. *Sun Ins. Office,* 363 U.S. 207 (1960), where the federal court cannot make a "confident guess" as to the Florida court's construction of its law (363 U.S., at 212). No such uncertainty exists here, however, for the Court of Appeals has made its determination that no hearing is required, and the silence of the Florida courts on the question evidences their disinclination to belabor the obvious.

Respondent respectfully submits therefore that, were Florida law applicable here, Petitioner has been afforded the same procedural rights required by that State for confirmation of a sale.

The decision of the Court of Appeals in so determining is manifestly a reasonably certain and supportable view of the Florida law, if applicable, and should be upheld.

CONCLUSION

The Petition for a Writ of Certiorari raises no important question of federal law, and should be denied.

Respectfully submitted,

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